

MONTANA LEGISLATIVE HISTORY

Chapter 135 1997

Bill H 243 S _____ Original bill & history ☒ C

H. Committee on Judiciary

Hearing Date(s) 2-6 _____ C

2-10 _____ C

_____ C

_____ C

Date Out _____ C

S. Committee on Judiciary

Hearing Date(s) 3-13 _____ C

_____ C

_____ C

_____ C

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

LEGISLATIVE HISTORIES SINCE 1997

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

If you have concerns regarding the format of the enclosed committee minutes or the recordings of the hearings, it is suggested that you contact your state legislators.

House BILL NO. 243

INTRODUCED BY

DENNY

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING CLAIMS FOR CIVIL PENALTIES FOR SHOPLIFTING TO BE ASSIGNED AND BROUGHT IN SMALL CLAIMS COURT; AMENDING SECTIONS 25-34-105, 25-35-505, AND 27-1-718, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 25-34-105, MCA, is amended to read:

"25-34-105. Parties -- representation. (1) Parties in the small claims court may be individuals, partnerships, corporations, unions, associations, or any other kind of organization or entity, except the state or any agency ~~thereof~~ of the state.

(2) A party may not be represented by an attorney unless all parties are represented by an attorney in a small claims court, ~~except as set forth in subsection (3) herein~~.

(3) ~~An individual~~ Individuals shall represent ~~himself~~ themselves in the small claims court. A partnership ~~shall~~ must be represented by a partner or one of its employees. A union ~~shall~~ must be represented by a union member or union employee. A corporation ~~shall~~ must be represented by one of its employees. An association ~~shall~~ must be represented by one of its members or by an employee of the association. Any other kind of organization or entity ~~shall~~ must be represented by one of its members or employees.

(4) ~~Only~~ Except as provided in subsection (5), only a party, natural or otherwise, who has been a party to the transaction with the defendant for which the claim is brought may file and prosecute a claim in the small claims court.

(5) ~~No~~ A party may not file an assigned claim in the small claims court unless it has been assigned pursuant to 27-1-718.

(6) Notwithstanding any other provision of this section, an executor or administrator of a decedent's estate, a guardian, or a conservator may be a party in the small claims court."

Section 2. Section 25-35-505, MCA, is amended to read:

1 **"25-35-505. Parties -- representation.** (1) Parties in the small claims court may be individuals,
2 partnerships, corporations, unions, associations, or any other kind of organization or entity, except the state
3 or any agency ~~thereof~~ of the state.

4 (2) A party may not be represented by an attorney unless all parties are represented by an attorney
5 in a small claims court.

6 (3) ~~An individual~~ Individuals may represent ~~himself~~ themselves in a small claims court. A
7 partnership may be represented by a partner or one of its employees. A union may be represented by a
8 union member or union employee. A corporation may be represented by one of its employees. An
9 association may be represented by one of its members or by an employee of the association. Any other kind
10 of organization or entity may be represented by one of its members or employees.

11 (4) ~~Only~~ Except as provided in subsection (5), only a party, natural or otherwise, who has been
12 a party to the transaction with the defendant for which the claim is brought may file and prosecute a claim
13 in the small claims court.

14 (5) ~~No~~ A party may not file an assigned claim in the small claims court unless it has been assigned
15 pursuant to 27-1-718.

16 (6) ~~No~~ A party may not file more than 10 claims in any calendar year.

17 (7) Notwithstanding any other provision of this section, a personal representative of a decedent's
18 estate, a guardian, or a conservator may be a party in the small claims court."

19
20 **Section 3.** Section 27-1-718, MCA, is amended to read:

21 **"27-1-718. Civil penalty for shoplifting.** (1) An adult or emancipated minor, as defined in
22 20-25-501, who takes possession of any goods, wares, or merchandise displayed or offered for sale in
23 any store or other mercantile establishment without the consent of the owner or seller and with the
24 intention of converting the goods to the taker's own use without having paid the purchase price of the
25 goods is liable to the owner or seller for a penalty, whether or not the goods have been returned
26 undamaged, in the amount of the greater of \$100 or the retail value of the goods, not to exceed \$500. This
27 amount is in addition to actual damages.

28 (2) When an unemancipated minor takes possession of any goods, wares, or merchandise displayed
29 or offered for sale by any store or other mercantile establishment without the consent of the owner or seller
30 and with the intention of converting the goods to the minor's own use without having paid the purchase

price of the goods, the minor's parent or legal guardian having custody of the minor is liable to the owner or seller for a penalty, whether or not the goods have been returned undamaged, equal to the greater of \$100 or the retail value of the goods, not to exceed \$500. For the purposes of this subsection (2), liability may not be imposed upon any governmental or private agency that has been assigned responsibility for the minor child pursuant to court order or action of the department of corrections or the department of public health and human services.

(3) Judgments, ~~but not~~ and claims, arising under this section may be assigned.

(4) A conviction for violation of 45-6-301 is not a condition precedent to maintenance of a civil action under this section."

NEW SECTION. **Section 4. Applicability.** [This act] applies to claims for civil penalties for shoplifting based on events occurring after [the effective date of this act].

-END-

HOUSE JUDICIARY

Page 3

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE - REREFERRED - DATE READ

HB0195	TASH, BILL	1/09	1/20	REQUIRE STATE AGENCY PAY FEE TO FILE CERTAIN WARRANTS, LIENS, AND ABSTRACTS	PASS AS AMENDED	01/27	VOTE: 16-1	TAXATION	1/28
HB0199	KNOX, DICK	1/09	1/27	NOTIFY BILL SPONSOR OF RULE PROPOSAL TO IMPLEMENT BILL	DO PASS	01/27	VOTE: 17-0		1/28
HB0200	AHNER, CHRIS	1/09	1/28	SURREPTITIOUS TAKING OF VISUAL IMAGE IN CERTAIN ROOMS IN PLACE OF BUSINESS	PASS AS AMENDED	01/28	VOTE: 20-0		1/29
HB0208	MARSHALL, ROD	1/09	1/22	INCREASE DUI PENALTIES	PASS AS AMENDED	01/30	VOTE: 18-0		1/31
HB0215	ORR, SCOTT	1/10	1/28	EXPAND DEFINITION OF POLICE DOG TO INCLUDE SEARCH AND RESCUE	PASS AS AMENDED	01/28	VOTE: 18-2		1/29
HB0218	CLARK, ROBERT	1/10	1/20	REVISE REFERENCE TO FED. GUN-FREE SCHOOL ZONE ACT IN INDIVID. LICENSURE LAW	DO PASS	01/20	VOTE: 18-0		1/20
HB0222	ANDERSON, SHIELL	1/10	2/04	DEATH PENALTY SENTENCING AND POSTCONVICTION PROCEEDINGS REVISIONS	PASS AS AMENDED	02/11	VOTE: 11-8		2/12
HB0231	BARNHART, BEVERLY	1/11	1/29	REVISE CHILD CUSTODY & VISITATION; PARENTING PLAN REQUIRED	02/06/97 TABLED 10-7	PASS AS AMENDED	02/18	VOTE: 14-6	2/18
HB0234	BITNEY, ROD	1/11	1/24	PROPOSED CONSTITUTIONAL AMENDMENT TO DEFINE PRINCIPLES FOR CRIMINAL LAWS	PASS AS AMENDED	01/27	VOTE: 16-0		1/31
HB0239	TROPILA, JOE	1/13	1/22	PROHIBIT A NOTARY PUBLIC FROM NOTARIZING THE NOTARY'S OWN SIGNATURE	PASS AS AMENDED	01/30	VOTE: 16-0		1/31
HB0243	DENNY, MATT	1/13	2/06	ALLOW ASSIGNMENT OF CIVIL CLAIMS FOR PENALTIES FOR SHOPLIFTING	PASS AS AMENDED	01/20	VOTE: 20-0		2/11
HB0251	HOLLAND, DON	1/14	2/03	ALLOW JURY COSTS TO BE ASSESSED AGAINST A PARTY IN CERTAIN CIVIL CASES	PASS AS AMENDED	02/05	VOTE: 19-1		2/07

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on February 6, 1997, at 8:00 AM, in Room 312-1.

ROLL CALL

Members Present:

Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Members Excused: REP. BOHARSKI was excused until 10:30 AM.
REP. ELLINGSON was excused until 9:00 AM.

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 243, HB 337, SB 103 POSTED
1/28/97

Executive Action: SB 103 BE CONCURRED IN
HB 343 DO PASS AS AMENDED
HB 231 TABLED

HEARING ON HB 243

Opening Statement by Sponsor: REP. MATT DENNY

{Tape: 1; Side: A; Approx. Time Count: 2.1; Comments: This set of minutes is recorded on 90-minute tapes.}

Proponents' Testimony:

BRAD GRIFFIN, Montana Retail Association

{Tape: 1; Side: A; Approx. Time Count: 3.5}

ARIC CURTISS, ShopKo - Helena

{Tape: 1; Side: A; Approx. Time Count: 5.3}

BERNARD JAKEWAY, ShopKo - Great Falls

{Tape: 1; Side: A; Approx. Time Count: 8.2}

JEFF KOCH, Montana Collectors Association/Associated Credit Bureaus of Montana

EXHIBIT 1

{Tape: 1; Side: A; Approx. Time Count: 9.7}

CHRIS GALLUS, Montana Chamber of Commerce

{Tape: 1; Side: A; Approx. Time Count: 13.1}

Questions From Committee Members and Responses:

{Tape: 1; Side: A; Approx. Time Count: 14.1 - 31.0}

Closing by Sponsor: REP. DENNY

{Tape: 1; Side: A; Approx. Time Count: 31.1}

HEARING ON SB 103

Opening Statement by Sponsor: SENATOR FRED VAN VALKENBURG

{Tape: 1; Side: A; Approx. Time Count: 34.3}

Proponents' Testimony:

MICHAEL MC CABE, Staff Judge Advocate General,
Department of Military Affairs

EXHIBITS 2 and 3

{Tape: 1; Side: B; Approx. Time Count: 5.4}

BILL GIANOULIAS, Chief Counsel, Department of Administration

{Tape: 1; Side: B; Approx. Time Count: 5.5}

ROGER HAGAN, Officer and Enlisted Associations of
Montana National Guard

EXHIBIT 4

{Tape: 1; Side: B; Approx. Time Count: 6.0}

Opponents' Testimony:

JAMIE TOWE, Attorney

EXHIBIT 5

{Tape: 1; Side: B; Approx. Time Count: 11.7}

H243

MT Collectors Association
Associated Credit Bureaus of MT
Jeffrey S. Koch 721-4454

EXHIBIT 1
DATE 2/2/77
HB 243

SHOULD NOT BE LIMITED TO BRINGING AN ACTION IN SMALL CLAIMS COURT FOR THE FOLLOWING REASONS:

REASON FOR CIVIL CLAIMS: MERCHANTS ARE ABLE TO RECOVER THEIR PROPERTY IN SHOPLIFTING CASES, AND MAY BE AWARDED RESTITUTION. HOWEVER, WITH THE COURTS OVERBURDENED, THEY MAY NEVER RECEIVE THE RESTITUTION. BY ALLOWING CIVIL REMEDIES THE MERCHANT CAN RECOUP SOME OF THE COSTS ASSOCIATED WITH THE CASE, SUCH AS SURVEILLANCE, ADDED STAFF, AND COST OF PROSECUTION INCLUDING APPEARING AT HEARINGS AND DEPOSITIONS. MERCHANTS SHOULD BE ABLE TO RECOUP THESE OUT OF POCKET EXPENSES FROM THE PERPERTRATERS.

HISTORY: MERCHANTS ARE SOMETIMES DESIROUS OF USING THIRD PARTY COLLECTION AGENTS TO PURSUE THESE CIVIL CLAIMS FOR THEM. MCA 27-1-718 CURRENTLY ALLOWS ASSIGNING THESE CIVIL REMEDIES TO THIRD PARTY COLLECTION ONLY AFTER THEY HAVE BEEN REDUCED TO JUDGMENT. THIS AMENDMENT WOULD ALLOW MERCHANTS TO ASSIGN THE CLAIM BEFORE IT HAS BEEN REDUCED TO JUDGMENT.

1. MCA 25-35-505 (SMALL CLAIMS RULES) LIMIT ANY ENTITY TO 10 ACTIONS IN ANY CALENDAR YEAR IN SMALL CLAIMS COURT. (GET TESTIMONY FROM SHOPKO ON SHOPLIFTING #'S)
2. MCA 25-35-505 (SMALL CLAIMS COURT) DOES NOT ALLOW AN ATTORNEY TO FILE A CLAIM. THIS PROHIBITS THE MERCHANT OR THEIR ASSIGNEE FROM PURSUING THESE CLAIMS THROUGH THEIR NORMAL CHANNELS, INSTEAD IT REQUIRES SOMEONE UNFAMILIAR WITH THE COURT SYSTEM TO REPRESENT THE MERCHANT OR ASSIGNEE. THIS SERVES NEITHER THE MERCHANT NOR THE COURT AS THE JUDGE MAY NOT ONLY HAVE TO EXPLAIN PROCEDURE TO THE DEFENDANT (SHOPLIFTER) BUT ALSO TO THE REPRESENTATIVE OF THE STORE.
3. MCA 27-1-718 REFERS TO "CIVIL PENALTY". TO BE MORE CONSISTENT WITH THIS SECTION OF THE CODE THIS SHOULD BE CHANGED TO "CIVIL LIABILITY".

THE BILL AS WRITTEN ADDRESSES THE PROBLEM OF ASSIGNING THE CLAIMS THEMSELVES FOR THIRD PARTY COLLECTIONS. IT NEEDS TO BE FURTHER AMENDED TO ALLOW THE FILING OF THE CLAIM IN ANY COURT OF COMPETENT JURISDICTION. THIS WOULD ALLOW THE CLAIMS TO BE FILED IN CITY, MUNICIPAL, JUSTICE, DISTRICT OR SMALL CLAIMS COURT AND ALLOW MERCHANTS AND THEIR ASSIGNEES THE FREEDOM TO FILE THE CLAIMS IN A COURT MORE SUITED TO THEIR PURPOSES. THE ALLEGED PERPERTRATORS LOSE NO RIGHTS IN THIS SCENARIO AND CAN STILL REPRESENT THEMSELVES.

FINALLY AS TO THE AMOUNT OF THE DAMAGES. CURRENTLY MCA 27-1-718 ALLOWS DAMAGES OF THE AMOUNT OF THE ITEMS SHOPLIFTED, OR \$100 WHICHEVER IS GREATER BUT NOT MORE THAN \$500.00. CLEARLY VERY FEW CLAIMS WILL BE FILED FOR \$100.00, NOR DOES THIS AMOUNT ACT AS MUCH OF A DETERRENT. I WOULD SUGGEST THIS AMOUNT BE INCREASED TO \$300.00.

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on February 10, 1997, at
8:00 AM, in Room 312-1.

ROLL CALL

Members Present:

Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 292, HB 416, HB 415
POSTED 2/5/97
Executive Action: HB 163 TABLED
HB 243 DO PASS AS AMENDED

HEARING ON HB 292

Opening Statement by Sponsor: REP. EDWARD J. "ED" GRADY
{Tape: 1; Side: A; Approx. Time Count: 1.4} EXHIBIT 1

Proponents' Testimony:

LARRY CLIFFORD, East Helena Police
{Tape: 1; Side: A; Approx. Time Count: 1.0}

JIM OBERHOFFER, Board of Crime Control
{Tape: 1; Side: A; Approx. Time Count: 12.5; Comments: This set of minutes was recorded on 90-minute tapes.}

Questions From Committee Members and Responses:
{Tape: 1; Side: A; Approx. Time Count: 14.0}

Closing by Sponsor: REP. GRADY
{Tape: 1; Side: A; Approx. Time Count: 17.2}

EXECUTIVE ACTION ON HB 243

Motion: REP. DIANA WYATT moved HB 243 DO PASS.
{Tape: 1; Side: A; Approx. Time Count: 20.0; Comments: The time count was not recorded for the balance of executive action.}

Discussion: Amendments by REP. DENNY were discussed.

Motion/Vote: REP. BILL BOHARSKI moved the amendments. The motion carried 20 - 0.

Motion/Vote: REP. BOHARSKI moved HB 243 DO PASS AS AMENDED. The motion carried 20 - 0.

HEARING ON HB 416

Opening Statement by Sponsor: REP. WES PROUSE EXHIBITS 2 and 3
{Tape: 1; Side: A; Approx. Time Count: 24.1}

Proponents' Testimony:

GARY MARBUT, Montana Shooting Sports Association EXHIBITS 3A-3B
{Tape: 1; Side: A; Approx. Time Count: 31.9; Comments: These exhibits were mailed in after the close of the hearing.}

BUD ELWELL, Northwest Arms Collectors
{Tape: 1; Side: A; Approx. Time Count: 41.3}

RICHARD OVERCAST, Missoula Businessman
{Tape: 1; Side: A; Approx. Time Count: 41.8}

Opponents' Testimony:

KATHY MCGOWAN, Montana Peace Officers Association
{Tape: 1; Side: B; Approx. Time Count: 1.4}

MIKE BATISTA, Department of Justice
{Tape: 1; Side: B; Approx. Time Count: 1.5}

KATE CHOLEWA, Montana Women's Lobby
{Tape: 1; Side: B; Approx. Time Count: 3.5}

JOHN WHITESINGER
{Tape: 1; Side: B; Approx. Time Count: 4.4}

EXHIBIT 4

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 2/10/97

NAME	PRESENT	ABSENT	EXCUSED
REP. BOB CLARK, CHAIRMAN	✓		
REP. DANIEL MC GEE, VICE CHAIR	✓		
REP. DIANA WYATT, VICE CHAIR	✓		
REP. CHRIS AHNER	✓		
REP. SHIELL ANDERSON	✓		
REP. ELLEN BERGMAN	✓		
REP. WILLIAM BOHARSKI	✓		
REP. AUBYN CURTISS	✓		
REP. JON ELLINGSON	✓		
REP. DUANE GRIMES	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. JOAN HURDLE	✓		
REP. DEB KOTTEL	✓		
REP. LINDA MC CULLOCH	✓		
REP. BRAD MOLNAR	✓		
REP. GERALD PEASE	✓		
REP. DIANE SANDS	✓		
REP. LIZ SMITH	✓		
REP. LOREN SOFT	✓		
REP. BILL TASH	✓		



HOUSE STANDING COMMITTEE REPORT

February 10, 1997

Page 1 of 1

Mr. Speaker: We, the committee on **Judiciary** report that **House Bill 243** (first reading copy -- white) **do pass as amended.**

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Page 2, line 16.

Strike: "A"

Insert: "Except for claims under 27-1-718, a"

-END-

Committee Vote:
Yes 20, No 0.

311415SC.Hgd

SENATE JUDICIARY

Page 3

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE ----- REREFERRED ----- DATE READ

HB0231	3/03	3/19		CONCUR	VOTE:10-0	3-26	3/27
HB0234	BITNEY, ROD		PROPOSED CONSTITUTIONAL AMENDMENT TO DEFINE PRINCIPLES FOR CRIMINAL LAWS				
	2/05	3/05		CONCUR AS AMENDED	VOTE:7-3	3-5	3/07
HB0239	TROPILA, JOE		PROHIBIT A NOTARY PUBLIC FROM NOTARIZING THE NOTARY'S OWN SIGNATURE				
	2/05	2/20		CONCUR	VOTE:10-0	2-20	2/20
HB0243	DENNY, MATT		ALLOW ASSIGNMENT OF CIVIL CLAIMS FOR PENALTIES FOR SHOPLIFTING				
	2/17	3/13		CONCUR	VOTE:10-0	3-13	3/14
HB0251	HOLLAND, DON		ALLOW JURY COSTS TO BE ASSESSED AGAINST A PARTY IN CERTAIN CIVIL CASES				
	2/12	3/12		CONCUR	VOTE: 10-0	3-12	3/13
HB0257	KOTTEL, DEB		LIMIT TRIAL BY JURY ON APPEAL IN MISDEMEANOR CASES				
	2/04	3/07		CONCUR	VOTE:9-1	3-7	3/07
HB0264	MOLNAR, BRAD		REQUIRE YOUTH COURT NOTIFY SCHOOL OF STUDENT WHO VIOLATES STATUTE				
	2/14	3/20		CONCUR AS AMENDED	VOTE:7-3	3-27	3/28
HB0268	KOTTEL, DEB		CHEMICAL TREATMENT OF CERTAIN SEX OFFENDERS				
	2/19	3/06		CONCUR AS AMENDED	VOTE: 9-1	3-14	3/17
HB0276	KOTTEL, DEB		NOTIFY ALLEGED FATHER OF CLAIM OF PATERNITY BY MOTHER				
	3/03	3/18		CONCUR AS AMENDED	VOTE:	3-18	3/20
HB0292	GRADY, ED		PROVIDE FOR CERTIFICATION OF A PEACE OFFICER WHO CHANGES EMPLOYMENT STATUS				
	2/19	3/04		CONCUR	VOTE: 10-0	3-4	3/05
HB0299	BOHARSKI, WILLIAM		AMEND CONST. TO PROHIBIT PREFERENTIAL TREATMENT BASED ON RACE OR SEX				
	3/03	3/17		TABLED ON 03/18	VOTE:8-2		
HB0303	BOHARSKI, WILLIAM		AMEND MCA TO PROHIBIT PREFERENTIAL TREATMENT BASED ON RACE OR SEX				
	3/03	3/17		TABLED ON 03/18	VOTE:7-3		
	CURTISS, AUBYN		COMPENSATION FOR RULE OR ORDINANCE REDUCING REAL PROPERTY VALUE				

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By ACTING CHAIRMAN REINY JABS, on March 13, 1997,
at 9:00 A.M., in Room 325.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused: Sen. Holden, Sen. Estrada, Sen. Halligan

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:	HB 243	3/4/97
	HB 479	3/4/97
	HB 346	3/4/97
Executive Action:	HB 251, HB 243, HB 479,	
	HB 346, HB 339, HB 68	

HEARING ON HB 243

{Tape: 1; Side: A; Approx. Time Count: 9:05; Comments: .}

Sponsor: REP. MATT DENNY, HD 63, Missoula

Proponents: Brad Griffin, Montana Retail Assoc.
Aric Curtiss, Helena Shop Ko Loss Prevention
Manager
Bernard Jakely, Great Falls Shop Ko Loss
Prevention Manager
Jeff Koch, Montana Collector's Association

Chris Gallus, Montana Chamber of Commerce

Opponents: None

Opening Statement by Sponsor:

REP. MATT DENNY, HD 63, Missoula, introduced HB 243. This bill allows the assignment of claims arising from shoplifting. On page 2, section 3, the language refers to a civil claim for the greater of \$100 or the retail value of goods not to exceed \$500 in addition to actual damages can be assessed against a shoplifter caught in your store. Under current law, those claims cannot be assigned and thus many of these claims are not being pursued to the extent that they could be. This bill would allow them to assign those claims to collection agencies or others. The first part of the bill would allow more than 10 filings in small claims court for those kind of claims.

Proponents' Testimony:

{Tape: 1; Side: a; Approx. Time Count: 9:07; Comments: .}

Brad Griffin, Montana Retail Assoc., spoke in support of HB 243. When a shoplifter is apprehended with a \$200 VCR and taken upstairs by the loss control person and he is processed, he is then released and the retailer can then send the shoplifter a demand letter for \$200 even though they received the merchandise. That is a civil penalty which is a minimum of \$100 and a maximum of \$500. Those demand letters usually go unpaid. The retailers can take up to 10 of the unpaid claims to small claims court per year and convert the claim into a judgment. One out of 60 shoppers is a non-traditional shopper. Only one out of 35 shoplifters is caught. Retailers go through the 10 claim limit in one month. The House inserted an amendment on page 2, line 16, which would allow retailers to file more than 10 claims in a calendar year. The retailer could take the unpaid demand letter and assign it over to a collection agency. The collection agency's attorney could attempt to turn that into a judgment. If there were no shoplifting, prices could be lowered from 12% to 15%.

Aric Curtiss, Helena Shop Ko Loss Prevention Manager, rose in support of HB 243. Last year they had 719 retail theft detentions in their five area stores. Shop Ko pursued civil recourse in 627 of those cases. Demands of over \$78,000 were made. Less than 54% of that was collected. At the time of the detention they inform the shoplifter that they will pursue civil demands and give them a copy of law explaining what it is. Once they are released, the corporate office sends a letter of demand. If that is unanswered, a second follow up letter goes out. Ten days later they will receive a third letter. Due to shoplifting, the average American family spends about \$500 a year in extra costs because retailers have to raise their prices.

Bernard Jakely, Great Falls Shop Ko Loss Prevention Manager, spoke in support of HB 243. This bill will make it easier to make sure that the people who are raising the prices for the rest of us pay their fair share. Shoplifters are becoming more violent. Last week a man and a woman concealed \$300 of merchandise, it took about six employees to apprehend them due to the fight which ensued. Shoplifting is a big business.

Jeff Koch, Montana Collector's Association, stated that this bill would allow retailers to assign their civil damage to someone who has the ability to collect. This bill only allows enforcement of this claim in small claims court. That is a difficulty for the merchant as well as the agency. Small claims court does not allow an attorney to be involved. It only allows 10 claims per year per entity. An assigned account cannot be brought in for an action. He asked for amendments which would change the wording "small claims court" to "court of competent jurisdiction." This would allow the claims to be brought in city, municipal, justice, or district courts.

Chris Gallus, Montana Chamber of Commerce, rose in support of HB 243.

Opponents' Testimony: None

Questions From Committee Members and Responses:

{Tape: 1; Side: a; Approx. Time Count: 9:21; Comments: .}

SEN. LORENTS GROSFIELD asked if shoplifters are trying to make a living by shoplifting?

Mr. Jakely stated that they have people who travel on the Shop Ko vacation plan. They will stop in Helena and shoplift. They then take the merchandise to Great Falls and ask for a refund. Refunds are better with a receipt, but to compete they do give refunds. While they are in Great Falls, they will hit four or five stores. The penalties are not severe enough. He feels sorry for the people who are down on their luck. If they would ask for assistance, they would probably put them to work for a day or two. This bill would put the judgment on their credit rating. The people who do this for a living are becoming more and more violent.

SEN. SUE BARTLETT asked **Mr. Koch** for clarification of his proposed amendment.

Mr. Koch explained that attorneys are not allowed unless all parties have attorneys. The consumers will not have an attorney which means the agency has to send an employee instead of an attorney. Section 25-05-505 (5) states that no party may file an assigned claim in small claims court. Agencies could bundle all the claims into one claim.

SEN. BARTLETT felt that HB 243 allowed a party to assign the claim as long as its under the statute which deals with the civil penalty for shoplifting. There would still be the attorney problem. Would a retail business assign the claims in groups?

Mr. Koch stated the assignment could be in groups. The bill addresses assignment and allows the assignment to be made but it does not address the small claims court situation which does not allow assigned claims to be brought in the court.

SEN. BARTLETT felt the House amendment handled that problem. This would be found on page 2, lines 14 and 15. She has a bill which repeals Chapter 34 of the small claims statutes. This bill would not conflict with this bill in any way.

SEN. STEVE DOHERTY stated that a shoplifting claim and a bad debt civil claim would mean that there would be different witnesses.

Mr. Koch stated that a typical civil filing would involve a pre-trial hearing which would take a half an hour. If that is not resolved there is a mediation session which lasts about 90 minutes. If that is not resolved, there would then be a trial which would take a couple of hours. This would all have to occur twice.

SENATOR CRIPPEN felt the title was very specific. He felt that what was being proposed was to add offenses other than shoplifting into other areas of jurisdiction.

Ms. Lane stated the title would have to be amended, but what is being presented is way beyond the scope of the original title which was specific to not only shoplifting but assigning claims for shoplifting and allowing them to be brought into small claims court.

REP. DENNY understood the problems involved with the proposed amendments.

CHAIRMAN JABS asked the procedure involved when someone was apprehended for shoplifting.

Mr. Griffin explained that a criminal conviction was not necessary to assess the civil penalty which could be a minimum of \$100 and a maximum of \$500. A demand letter can be sent for the amount of the merchandise which was taken, even if the retailer recovered the merchandise.

Closing by Sponsor:

REP. DENNY closed on HB 243.

to whichever body was making the decision in the case. If there was no jury, the judge would decide. If there was a jury, the jury would decide. He felt that there might be a problem.

SEN. DOHERTY stated that there are certain federal cases in which you are not allowed to have a jury. Some federal judges impanel a jury for advisory questions on factual matters. He would be willing to have a jury make an advisory opinion to the judge after hearing all the evidence.

SEN. CRIPPEN stated that he would try to hold the bill for a day so amendments could be prepared.

SEN. DOHERTY felt that by making the jury make that decision, the role of the jury would change from deciding facts to making a decision about the law. Currently the judge gives the instructions, the jury determines the facts and determine who wins. Does it go both ways? If the defense is a sham and the defense lawyers ran up the cost of the case because they are paid by the hour, the jury would need to be instructed to determine if either side or both sides cases were without merit.

EXECUTIVE ACTION ON HB 243

{Tape: 2; Side: a; Approx. Time Count: 10:34; Comments: .}

Discussion:

SEN. GROSFIELD, referring to page 2, line 4, asked if the language added by the House in line 16 might also be included.

SEN. BARTLETT explained that small claims court are set up to provide a neutral forum and expeditious procedures with a minimum of legal trappings. That is why attorneys are not customarily seen in small claims courts. The collection agencies may not want to take the time to do this, but an employee of theirs can take care of the cases.

Motion/Vote: **SEN. CRIPPEN** MOVED HB 243 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 479

{Tape: 2; Side: A; Approx. Time Count: 10:45; Comments: .}

Motion: **SEN. CRIPPIN** MOVED HB 479 BE CONCURRED IN.

Discussion:

SEN. BARTLETT commented that at the stage where the clerk of court notifies the clerk and recorder and has the person's registration record flagged so that they are not drawn for a jury list, this would be in violation of current law. That may be going on at the present time. House Bill 479 states that the

HOUSE BILL NO. 243

INTRODUCED BY DENNY

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING CLAIMS FOR CIVIL PENALTIES FOR SHOPLIFTING TO BE ASSIGNED AND BROUGHT IN SMALL CLAIMS COURT; AMENDING SECTIONS 25-34-105, 25-35-505, AND 27-1-718, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 25-34-105, MCA, is amended to read:

"25-34-105. Parties -- representation. (1) Parties in the small claims court may be individuals, partnerships, corporations, unions, associations, or any other kind of organization or entity, except the state or any agency ~~thereof of the state~~.

(2) A party may not be represented by an attorney unless all parties are represented by an attorney in a small claims court, ~~except as set forth in subsection (3) herein~~.

(3) ~~An individual~~ Individuals shall represent ~~himself~~ themselves in the small claims court. A partnership ~~shall~~ must be represented by a partner or one of its employees. A union ~~shall~~ must be represented by a union member or union employee. A corporation ~~shall~~ must be represented by one of its employees. An association ~~shall~~ must be represented by one of its members or by an employee of the association. Any other kind of organization or entity ~~shall~~ must be represented by one of its members or employees.

(4) ~~Only~~ Except as provided in subsection (5), only a party, natural or otherwise, who has been a party to the transaction with the defendant for which the claim is brought may file and prosecute a claim in the small claims court.

(5) ~~No~~ A party may not file an assigned claim in the small claims court unless it has been assigned pursuant to 27-1-718.

(6) Notwithstanding any other provision of this section, an executor or administrator of a decedent's estate, a guardian, or a conservator may be a party in the small claims court."

Section 2. Section 25-35-505, MCA, is amended to read:

1 **"25-35-505. Parties -- representation.** (1) Parties in the small claims court may be individuals,
2 partnerships, corporations, unions, associations, or any other kind of organization or entity, except the state
3 or any agency ~~thereof~~ of the state.

4 (2) A party may not be represented by an attorney unless all parties are represented by an attorney
5 in a small claims court.

6 (3) ~~An individual~~ Individuals may represent ~~himself~~ themselves in a small claims court. A
7 partnership may be represented by a partner or one of its employees. A union may be represented by a
8 union member or union employee. A corporation may be represented by one of its employees. An
9 association may be represented by one of its members or by an employee of the association. Any other kind
10 of organization or entity may be represented by one of its members or employees.

11 (4) ~~Only~~ Except as provided in subsection (5), only a party, natural or otherwise, who has been
12 a party to the transaction with the defendant for which the claim is brought may file and prosecute a claim
13 in the small claims court.

14 (5) ~~No~~ A party may not file an assigned claim in the small claims court unless it has been assigned
15 pursuant to 27-1-718.

16 (6) ~~No~~ A EXCEPT FOR CLAIMS UNDER 27-1-718, A party may not file more than 10 claims in any
17 calendar year.

18 (7) Notwithstanding any other provision of this section, a personal representative of a decedent's
19 estate, a guardian, or a conservator may be a party in the small claims court."
20

21 **Section 3. Section 27-1-718, MCA, is amended to read:**

22 **"27-1-718. Civil penalty for shoplifting.** (1) An adult or emancipated minor, as defined in
23 20-25-501, who takes possession of any goods, wares, or merchandise displayed or offered for sale by
24 any store or other mercantile establishment without the consent of the owner or seller and with the
25 intention of converting the goods to the taker's own use without having paid the purchase price of the
26 goods is liable to the owner or seller for a penalty, whether or not the goods have been returned
27 undamaged, in the amount of the greater of \$100 or the retail value of the goods, not to exceed \$500. This
28 amount is in addition to actual damages.

29 (2) When an unemancipated minor takes possession of any goods, wares, or merchandise displayed
30 or offered for sale by any store or other mercantile establishment without the consent of the owner or seller

1 and with the intention of converting the goods to the minor's own use without having paid the purchase
2 price of the goods, the minor's parent or legal guardian having custody of the minor is liable to the owner
3 or seller for a penalty, whether or not the goods have been returned undamaged, equal to the greater of
4 \$100 or the retail value of the goods, not to exceed \$500. For the purposes of this subsection (2), liability
5 may not be imposed upon any governmental or private agency that has been assigned responsibility for the
6 minor child pursuant to court order or action of the department of corrections or the department of public
7 health and human services.

8 (3) Judgments, ~~but not~~ and claims, arising under this section may be assigned.

9 (4) A conviction for violation of 45-6-301 is not a condition precedent to maintenance of a civil
10 action under this section."
11

12 **NEW SECTION. Section 4. Applicability.** [This act] applies to claims for civil penalties for
13 shoplifting based on events occurring after [the effective date of this act].
14

-END-